
In the Matter of the Compensation of
CHRISTOPHER A. ROUSE, Claimant
Own Motion No. 22-00032OM
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Moore & McQuain, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Curey and Ousey.

Claimant requests review of the October 15, 2022, Own Motion Notice of Closure that administratively closed his “post-aggravation rights” new/omitted medical condition claim for right shoulder rotator cuff/supraspinatus partial tear and right shoulder labral tear. Claimant contends that his claim was prematurely closed, or in the alternative, requests that the Board review the Own Motion Notice of Closure after appointing a medical arbiter.¹ Based on the following reasoning, we set aside the Notice of Closure as premature.

FINDINGS OF FACT

Claimant compensably injured his right shoulder on September 17, 2008. (Ex. 5). The SAIF Corporation accepted a nondisabling right acromioclavicular joint sprain. (*Id.*)

On August 11, 2022, SAIF voluntarily reopened an Own Motion claim for new/omitted medical conditions of right shoulder rotator cuff/supraspinatus partial tear and right shoulder labral tear. (Ex. 13).

On September 16, 2022, SAIF sent claimant a letter stating that, because he had not treated for his work injury since May 14, 2019, his claim would be closed unless he scheduled treatment, attended an examination, or informed SAIF that his reasons for not receiving treatment were outside of his control within 14 days of the letter date. (Ex. 14). The letter indicates that it was sent to claimant and to his attorney. (Ex. 14-1).

¹ Claimant’s September 17, 2008, claim was accepted as a nondisabling claim. Thus, his aggravation rights expired on September 17, 2013. Therefore, when claimant sought claim reopening in June 2018, the claim was within our Own Motion jurisdiction. (Ex. 10); ORS 656.278(1). On August 11, 2022, SAIF issued a Notice of Voluntary Reopening for the Own Motion claim. (Ex. 13). On October 15, 2022, SAIF issued its Own Motion Notice of Closure. (Ex. 16).

On October 15, 2022, SAIF issued its Own Motion Notice of Closure that administratively closed his claim and did not award temporary disability or permanent impairment. (Ex. 16).

On October 31, 2022, Dr. Lin evaluated claimant and recommended a right shoulder MRI and physical therapy. (Ex. 17).

CONCLUSIONS OF LAW AND OPINION

On December 2, 2022, claimant requested review of the Own Motion Notice of Closure. (Ex. 18). In doing so, he submitted an affidavit explaining that he had become ill while traveling for a family reunion and that he had to cancel an evaluation of his right shoulder with Dr. Lin because his illness continued after returning home. (Ex. 18-2). Claimant noted that he had resumed treatment with Dr. Lin, who had recommended an MRI and physical therapy. (*Id.*)

SAIF contends that it strictly complied with the requirements for issuing an administrative claim closure due to claimant's failure to seek medical treatment, because claimant did not respond to its September 16, 2022, letter within 14 days. Based on the following reasoning, we set aside the Own Motion Notice of Closure.

ORS 656.268(1)(c) and OAR 436-030-0034(1) provide for claim closure if the worker fails to seek treatment for more than 30 days without the instruction or approval of the attending physician. Among the requirements for such closure is that the carrier provide written notification by certified mail to the worker (after the 30-day lack of treatment period expires) that the claim will be closed unless the worker establishes (within 14 days) that the lack of treatment was either authorized by the attending physician or was for reasons outside the worker's control. The carrier then must wait the 14-day period to allow the worker to provide such evidence, and use 30 days from the last treatment provided as the date the claim qualifies for closure on the Notice of Closure. OAR 436-030-0034(1). The claimant's attending physician or authorized nurse practitioner must be copied on all notifications and denial letters regarding an administrative claim closure. *See* OAR 436-030-0034(7). For an administrative closure to be proper, the notice must be in strict compliance with the applicable rule. *Paniagua v. Liberty Northwest Ins. Corp.*, 122 Or App 288 (1993).

Although Own Motion claims are processed under ORS 656.278(6), the above law regarding processing of claims under ORS 656.268 for which a worker fails to seek treatment for more than 30 days is relevant to the processing of Own

Motion claims under the same circumstances. *See Joseph O. Tompkins*, 70 Van Natta 508, 511 (2018). In this regard, we are mindful of the objective to adhere when possible to standard claim processing concepts regarding Own Motion claims. *Edward Hines Lumber Co. v. Kephart*, 81 Or App 43, 46 (1986); *see Drago Tomic*, 69 Van Natta 204, 207 (2017) (procedure for closing claims under ORS 656.268(1)(b), for which a combined condition denial has issued, applied to Own Motion claim closure); *see also Anthony D. Cayton*, 66 Van Natta 1678, 1682-83 (2014) (finding Own Motion Notice of Closure to be unreasonable where the carrier did not strictly comply with ORS 656.268(1)(c) and OAR 436-030-0034(3) for administrative claim closure when a worker failed to attend a mandatory closing examination).

Following our review, we conclude that the record does not establish that SAIF strictly complied with the requirements for claim closure under ORS 656.268(1)(c) and OAR 436-030-0034(7). Specifically, OAR 436-030-0034(7) requires the carrier to copy the claimant's attending physician on any notification letters regarding an administrative claim closure. Yet, SAIF's September 16, 2022, letter notifying claimant that he must seek treatment within 14 days indicates that it was copied only to claimant's attorney. In other words, in contravention of OAR 436-030-0034(7), SAIF's letter does not indicate that it was copied to Dr. Lin, claimant's attending physician. (Ex.14).

Consequently, SAIF has not strictly complied with the requirements for an administrative claim closure. *See* OAR 436-030-0034(7).² Therefore, the October 15, 2022, Own Motion Notice of Closure is set aside, and the claim is remanded to SAIF for further processing according to law.

Finally, claimant's counsel is awarded an "out-of-compensation" attorney fee equal to 25 percent of any increased temporary disability compensation resulting from this order, payable directly to claimant's attorney. *See* ORS 656.386(5); OAR 438-015-0080(1); *Dean R. Allen*, 71 Van Natta 1426, 1429 (2019).

IT IS SO ORDERED.

Entered at Salem, Oregon on June 16, 2023

² The parties did not specifically raise the issue of the OAR 436-030-0034(7) requirement of copying claimant's attending physician with the warning letter. However, claimant did raise the issue of "premature closure." Therefore, SAIF's compliance with the claim closure requirements was at issue, and is subject to our review. *See Debra Carr*, 61 Van Natta 2528, 2529 (2009); *Estella M. Rogan*, 50 Van Natta 205, 206 n 4 (1998) (Appellate Review Unit was authorized to address premature closure issue on reconsideration even though issue was not expressly raised by the parties).